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Cases:

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

No. 90-1912

STEPHANIE NORDLINGER,
Petitioner,

v.

KENNETH HAHN, in his capacity as Tax Assessor for Los Angeles County, and the COUNTY OF LOS ANGELES,
Respondents.

On Writ of Certiorari To The Court of Appeal of the State of California

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AMICI CURIAE BRIEF OF THE WASHINGTON LEGAL FOUNDATION; ALLIED EDUCATIONAL FOUNDATION; CALIFORNIA STATE SENATORS KENNETH L. MADDY, BILL LEONARD, NEWTON R. RUSSELL, EDWARD R. ROYCE, DON ROGERS, JOHN R. LEWIS, AND ED DAVIS; AND CALIFORNIA ASSEMBLY MEMBERS JAMES L. BRULTE, GILBERT W. FERGUSON, PHILLIP WYMAN, PAT NOLAN, DORIS ALLEN, TRICE HARVEY, BILL BAKER, DAVID KNOWLES, CAROL BENTLEY, PAUL A. WOODRUFF, ANDREA SEASTRAND, CHARLES W. QUACKENBUSH, RICHARD L. MOUNTJOY, TOM MAYS, TRICIA HUNTER, MICKEY CONROY, AND TOM McCLINTOCK IN SUPPORT OF RESPONDENTS

INTERESTS OF THE *AMICI* CURIAE

The Washington Legal Foundation (WLF) is a national nonprofit public interest law and policy center with more than 120,000 members and supporters nationwide. WLF

engages in litigation and administrative proceedings affecting the broad public interest. WLF is particularly interested in litigation involving the growth of government and excessive taxation. In addition, WLF has participated in cases which involve attempts to impinge upon traditional powers of state and local governments. *See Spallone v. U. S.*, 110 S.Ct. 625 (1990); *Gregory v. Ashcroft*, 111 S.Ct. 2395 (1991).

The Allied Educational Foundation (AEF) is a non-profit, charitable and educational foundation based in Englewood, New Jersey. Founded in 1964, AEF is dedicated to promoting education in diverse areas of study such as law and public policy and has appeared as *amicus* before this Court on a number of occasions.

Senator Maddy, *et al.*, are members of the legislature of the State of California and desire to participate in this case in order to protect their state's interest under the Constitution in fashioning tax policy without undue interference from the federal judiciary and in order to preserve Article XIII A of the California Constitution, which has played an important role in placing limits on taxes.

Amici believe that the national and state governments have important roles to play in our federal system of government. WLF believes that Article XIII A (popularly known as "Proposition 13") of the California Constitution serves an important state interest by limiting the growth of taxes in California and protecting homeowners from being taxed out of their homes, while at the same time permitting local governments to continue to collect funds to provide for governmental services. Article XIII A passes constitutional scrutiny under this Court's traditional rational basis test, thereby permitting California the leeway to fashion tax policy without undue interference from the federal judiciary.

Because of the unique perspective of WLF, AEF, and the *amici* members of the California legislature, this brief will bring relevant matter to the attention of the Court that

will not be brought to the attention of the Court by other parties.

This brief is submitted with the written consent of both parties pursuant to Rule 37.3.

STATEMENT OF THE CASE

In the interests of judicial economy, *amici* adopt the Statement of the Case as set forth in Respondents' brief.

SUMMARY OF THE ARGUMENT

In 1978 the people of California were confronted with rising taxes with no end in sight. Rising home values often outstripped inflation, and California homeowners found that skyrocketing tax assessments and the resulting property tax threatened to tax some people out of their homes. In an attempt to stop the rise in taxes, California voters enacted by initiative Article XIII A (popularly known as Proposition 13).

Article XIII A of the California Constitution is a comprehensive scheme to limit most state and local tax increases. Section 2 of Article XIII A limits assessment increases to the lessor of 2% or the increase in the consumer price index. However, when property is sold it is reassessed, and the 2% or consumer price index increase limit is then based upon the value of the home at the time of the purchase. This type of assessment is known as an acquisition value assessment.

Petitioner argues that the use of acquisition value assessments treats new home owners in an inequitable fashion since such new home owners are likely to pay higher taxes than similarly situated neighbors whose assessments are based upon the value of their homes in earlier years. Petitioner claims that this Court's decision in *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, 488 U.S. 336 (1989), mandates that Article XIII A be ruled unconstitutional.

Petitioner further argues that the State of California lacks any rational basis for using the acquisition value assessment system and hence infringes upon the rights guaranteed by the Equal Protection Clause of the United States Constitution. Finally, Petitioner argues that Article XIII A, Section 2 impacts upon the right to travel and hence the Court should subject Section 2 to heightened scrutiny.

Petitioner's argument is without merit. First, *Allegheny* is distinguishable from the case at bar. *Allegheny* involved the aberrational actions of a local government official that were contrary to state law. Article XIII A is a state policy formulated for reasonable policy purposes.

Article XIII A, Section 2 may not be the perfect tax assessment system, but it can withstand constitutional scrutiny. All tax systems are in some fashion inequitable or unfair. The issue before this Court is not, however, whether Article XIII A is fair but whether it is constitutional. This Court has traditionally applied a rational basis test in evaluating challenges to state taxes and has given the states wide leeway in devising tax codes. Article XIII A, Section 2 promotes a number of state policies in a reasonable manner.

First, the acquisition value assessment system is arguably a more fair and reasonable system of assessments than regular reassessments based upon market conditions. Unless a home owner sells a home, the home owner will not receive any additional cash income as a result of the increase in the home's value; any increase is merely a "paper" gain. Being taxed upon a "paper" gain is not fair.

In addition, the acquisition value system treats all taxpayers equally and provides taxpayers with predictability in determining potential future property taxes. That predictability allows taxpayers, including the Petitioner, to make rational planning decisions concerning

their ability to afford housing. Predictability is a reasonable state interest served by Article XIII A.

Finally, Section 2 does not stand in isolation. Article XIII A is part of a comprehensive scheme to limit taxes while still permitting local governments to collect revenue. Such a tax limitation is a reasonable state policy which justifies the classifications created by Section 2. Section 2, by limiting property tax increases and by providing taxpayers with predictability, diminishes the possibility that homeowners will be taxed out of their homes.

Petitioner's argument that Article XIII A impacts upon the Constitutional right to travel is without merit. The right to travel may be impacted by residency requirements. However, Article XIII A contains no residency requirement. A new home buyer from Nebraska or Timbuktu is treated in precisely the same manner as a new home buyer who is a native resident of California.

Finally, Petitioner and her supporting *amici* all argue that Section 2 is unfair and inequitable. However, they do not agree as to what tax assessment system is fair and equitable. That is not surprising. Taxes are inherently inequitable, and the writing of tax laws requires considerations of many factors which this Court is not equipped to deal with. If Article XIII A is struck down, the federal courts will be flooded with challenges to nearly every state and local tax and this Court will find itself acting as a Ways and Means committee re-writing the tax codes of states, counties, school districts, and cities around the nation.

ARGUMENT

I. ARTICLE XIII A OF THE CALIFORNIA CONSTITUTION DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE U.S. CONSTITUTION BECAUSE IT IS NOT ARBITRARY AND SERVES A REASONABLE STATE PURPOSE.

A. Article XIII A of the California Constitution Is Not The Aberrational Policy of An Individual Assessor But The Policy Of The State Of California.

Petitioner challenges Article XIII A (popularly known as "Proposition 13") of the Constitution of the State of California, arguing that the method of tax assessment established under that article discriminates against Petitioner in violation of the Equal Protection Clause of the Constitution and the Constitutional right to interstate travel.[1] *Amici* will first address the equal protection argument and then deal with the right to travel argument.

In 1978 the California voters by initiative enacted Article XIII A of the California Constitution in an attempt to end the continual spiral of rising taxes.[2] Article XIII A is a comprehensive program to limit taxes and permit individuals some predictability in determining future tax assessments while at the same time providing revenue to local governments.

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[1]"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Constitution, Amend. XIV, Section 1.

[2]Even Petitioner concedes that "this is not to say that the pre-Proposition 13 system did not place a strain on some homeowners when rapid property appreciation outstripped inflation, causing taxes to outstrip inflation." Pet. Br. 34.

Petitioner challenges Section 2 of Article XIII A which limits assessments to "the full cash value . . . of real property as shown on the 1975-76 tax bill under 'full cash value,' or thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment." This system is commonly known as an acquisition value system of assessments.

Section 2 of Article XIII A permits upward adjustments in the fair market value base used to determine assessments, so long as that increase does not exceed the lesser of 2% or the consumer price index or comparable data. In addition, Section 2 has been amended several times since the 1978 passage of Proposition 13. The amendments carve out certain exceptions to the acquisition value system of assessments which preserve the base-line value of property under a number of circumstances where new building or changes in ownership would otherwise change the acquisition value of the property. Some of the exceptions carved out include cases in which the property is inherited, equipped with solar power, or improved to withstand earthquakes.

Petitioner argues that *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, 488 U.S. 336 (1989), compels this Court to strike down Article XIII A as unconstitutional. *Allegheny* is factually distinguishable. In *Allegheny*, the tax assessor of Webster County assessed real property for tax purposes on the basis of its most recent purchase price and made only minor modifications in the assessed value of land which had not been recently sold. The assessment system of the county assessor was contrary to the requirement of the West Virginia constitution that "taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value . . ." W.Va. Const., Art. X §1.

No West Virginia statute or practice authorized "local officials to fashion their own substantive assessment policies independently of state statute." *Allegheny*, 488 U.S. at 345. Yet "the Webster County assessor has, apparently on her own initiative, applied the tax laws of West Virginia [contrary to state law] with the resulting disparity in assessed value of similar property." *Allegheny*, 488 U.S. at 345. Because the "aberrational conduct" of the assessor contrary to the requirements of the state constitution resulted in unequal assessments, this Court held the policy unreasonable and thus constitutionally deficient. This Court ruled that the policy of the tax assessor of Webster County violated the Equal Protection Clause of the United States Constitution.

Significantly, in finding the Webster County assessor's policies in violation of the Equal Protection Clause of the Constitution, this Court distinguished a similar assessment system "if it were the law of a State generally applied instead of the aberrational enforcement policy" of Webster County. Furthermore, this Court expressly reserved judgment on whether Proposition 13 could withstand constitutional scrutiny. 488 U.S. at 344-345 n. 4.

Petitioner argues that the policy of the Allegheny assessor and Article XIII A are similar. While the tax assessment system in *Allegheny* bears some surface similarity to the assessment system mandated by Article XIII A, they are very different. The distinguishing feature of the procedure struck down in *Allegheny* was that the tax assessment determinations were ad hoc, arbitrary, aberrational decisions of a single local government official carried out in contravention of state law.

In contrast, the assessment system mandated by Article XIII A is not the aberrant policy of an individual that is contrary to state law, but is the official policy of the state. In light of that distinction, *Allegheny* does not provide the answer to the question as to whether Article XIII A can withstand constitutional scrutiny. Rather, Article XIII A must be examined on its own merits.

B. Rational Basis Is The Proper Standard Of Review In Evaluating Whether Article XIII A Can Withstand Constitutional Scrutiny.

Article XIII A involves classifications of property for tax purposes. However, that does not mean that Article XIII A is unconstitutional. Classifications of property are clearly permissible "if the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy." *Brown-Foreman Co. v. Kentucky*, 217 U.S. 563, 573 (1910). Article XIII A is neither capricious nor arbitrary but is based upon reasonable considerations of public policy. Article XIII A provides certainty, predictability, and limitations on taxes. Furthermore, the system provides a stable source of revenue for government.

In evaluating Article XIII A, it is appropriate for this Court to show restraint in second-guessing the considerations of the State of California which led to the adoption of Article XIII A. This Court has a long history of permitting the states to formulate tax policies with a minimal amount of judicial interference where "no specific federal right, apart from equal protection, is imperilled." *Kahn v. Shevin*, 416 U.S. 352, 355 (1974), *citing Lenhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359 (1973). This judicial deference permits the states "large leeway in making classification and drawing lines which in their judgment produce reasonable systems of taxation." *Id.* at 355. That is in part because "[q]uestions of federalism are always inherent in the process of determining whether a state's laws are to be accorded the traditional presumption of constitutionality." *San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1, 44 (1973).

When examining equal protection challenges to state tax policies, the "rational basis" standard applies. As this Court has stated, "A century of Supreme Court adjudication under the Equal Protection Clause affirmatively supports the application of the traditional standard of view,

which only requires that the State's system be shown to bear some rational relationship to legitimate state purposes." *San Antonio,* 411 U.S. at 44. Furthermore, Petitioner cannot prevail if the question of rationality remains debateable. *Minnesota v. Clover Leaf Creamery*, 449 U.S. 456, 464 (1981). Petitioner must "negative every conceivable basis which might support it." *Maddden v. Kentucky,* 309 U.S. 83, 88 (1940).

When applying the rational basis standard, this Court has only rarely struck down state tax codes based on allegations that the codes infringe upon the equal protection guarantees of the United States Constitution. In contrast to the limited number of cases in which state taxes have been struck down, this Court has upheld numerous distinctions created by tax codes, including those distinguishing between individuals and corporations (*Lenhausen v. Lake Shore Auto Part Co.*, 410 U.S. 356, 365 (1973)); those based on the size of corporations (*Fox v. Standard Oil Company of New Jersey*, 294 U.S. 87, 100 (1935)); those distinguishing between utilities and other business units (*New York Rapid Transit Corp. v. New York*, 303 U.S. 573, 579 (1938)); those based upon the purposes for which warehoused goods are stored (*Allied Stores of Ohio v. Bowers*, 358 U.S. 522 (1959)); those distinguishing between adulterators and non-adulterators of distilled spirits (*Brown-Forman Co. v. Kentucky*, 217 U.S. 563 (1910)); those distinguishing between widows and widowers (*Kahn v. Shevin*, 416 U.S. 351 (1974)); those based upon ownership by railroads (*Nashville, C. & St. L. Ry. v. Browning*, 310 U.S. 362 (1940)); those distinguishing between vehicle use and weight (*Coyne v. Prouty*, 289 U.S. 704 (1933)); those based on differences in the resource being extracted (*Lake Superior Consol. Iron Mines v. Lord*, 271 U.S. 577 (1926)); those distinguishing between agricultural versus non-agricultural uses (*Clark v. Kansas City*, 176 U.S. 114 (1900)); and those based on leased versus non-leased property (*Illinois Central v. Minnesota*, 309 U.S. 157 (1940)).

This Court should judge Article XIII A by the same rational basis standard which this Court traditionally applied in granting the states broad leeway in creating classifications.

C. Article XIII A Serves A Number of Proper State Interests.

Standing alone, Section 2 of Article XIII A promotes a number of reasonable interests of the State of California. The acquisition value system "is grounded on the belief that taxes should be based on the original cost of property and should not tax unrealized paper gains in the value of the property." *Allegheny* at 344-345 n.4. Paper gains in the value of a home do not translate into money with which to pay taxes, unless the owner sells or mortgages his property. Unlike commercial property, homeowners' property does not produce income.[3] Unless the homeowner is fortunate enough to have an income that rises in the same proportion as the value of his home, rising taxes based upon paper gains can literally tax a homeowner out of the home.

In many ways the acquisition value system is more fair that the current-value system of assessments. The acquisition value system permits a potential home buyer to reasonably calculate future property taxes based upon the value of the home at the time of acquisition. The home buyer may then make a rational decision based upon his anticipated income and expenses as to whether he can afford the home. If, however, the assessments change with each fluctuation in the market, the buyer is unable to make such a rational decision and thus may find himself taxed out of his home. The advantage of the acquisition value system over the current-value system of assessments

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[3]Different considerations may be involved in the case of business properties that generate revenue. *See R.H. Macy v. Contra Costa County*, No. 90-1603, *dismissed*, 60 U.S.L.W. 3005 (June 28, 1991). However, that issue is not before this Court.

was recognized by the Supreme Court of California, which found that the acquisition value system "may operate on a *fairer* basis than the current value approach," *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal.3d 208, 235, 149 Cal.Rptr. 239, 251, 583 P.2d 1281, 1293 (1978) (emphasis added). Furthermore, even *amicus* International Association of Assessing Officers ("IAAO") writing in support of Petitioner, implicitly concede that "a pure 'acquisition value' system" would theoretically have a reasonable purpose. *Amicus* IAAO Br. 15.

When Article XIII A was adopted, the voters rolled back the base-line to 1974-75 levels for property owners who owned homes at that time. Petitioner argues that since the enactment of Article XIII A, the inequalities of the system have grown, with the 1978 homeowners constituting a privileged class of taxpayers who benefit from the higher taxes paid by later home purchasers such as Petitioner. To the extent that Article XIII A "grandfathers" the acquisition value of property values for homeowners, it gives a tax benefit based upon how early one purchased a home. However, that is not unconstitutional; "grandfather" clauses have been routinely upheld by the courts. *New Orleans v. Duke*, 427 U.S 297, 305-06 (1976).

In this case, however, those who have owned their homes since the passage of Article XIII A are not even beneficiaries of a true "grandfather" provision. All post-Article XIII A home purchasers, including Petitioner, receive at least the same benefit that the earlier home owners received -- they will have their assessments based upon acquisition value. Potential homeowners all have the opportunity to purchase a home knowing that they can reasonably calculate future property taxes. If home prices rise in the future, all homeowners, including Petitioner, will be protected from being taxed out of their homes by Article XIII A's guarantee that the assessments on their homes will be based upon acquisition value. It is the homeowners who purchased their homes prior to 1974 who

have the strongest argument that their taxes are inequitable because Article XIII A "grandfathered" the assessment based on the value of their homes as of 1974 -- rather than on the basis of acquisition value, which may have been considerably less.[4]

The repeated refrain in Petitioner's brief and the briefs of *amici* supporting Petitioner is that the tax assessment procedure of Article XIII A is "unfair" and "inequitable." It *may* be true that Article XIII A is not entirely equitable and that Petitioner deserves some sympathy. That is because all taxes are by their very nature unfair and inequitable. What is equitable about a sales tax which might place a burden on those with the least income? What is equitable about a property tax when those without property do not have to directly pay the tax? What is equitable about income tax deductions for homeowners but not renters? In all likelihood, there is no such thing as a truly equitable tax. Every tax has some inherent inequity which "unfairly" places a disproportionate burden upon some class of taxpayers.

The problem with allowing courts to use equity or fairness as a criterion for reviewing a tax code's constitutionality is made manifest by comparing the complaints levelled against Article XIII A in this case and in the earlier challenge to its constitutionality, *Amador*. In that case, then-Chief Justice Rose Bird of the California Supreme Court complained in her dissent that there was no rationality to a system that would assess at acquisition

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[4]In *Amador* the failure to roll back the base-line past 1975 to the original acquisition price of homes was discussed. However, the California Supreme Court correctly pointed out that the arbitrary cut-off was necessary to produce reasonable revenue and was justifiable for administrative reasons. 22 Cal.3d at 236, 149 Cal.Rptr. at 252, 583 P.2d at 1294. The pre-1975 home purchasers were the "victims" of discrimination, when *Amador* was decided; however, they are now, in Petitioner's view, part of the "privileged class." Perhaps after several years pass Petitioner will also realize that she is a beneficiary of the tax limits imposed by Article XIII A.

value a home that was inherited. Since *Amador*, the State of California has amended Article XIII A to exempt most such inheritances from re-valuation. Yet, in the case at bar, Petitioner argues that the exemption is evidence of the disparity of Article XIII A. Pet. Br. 40.

The exceptions to the acquisition value system that have been carved out of Article XIII A -- such as inheritance -- and about which Petitioner complains, were often enacted to make the system more equitable and fair. Some exceptions cure the earlier "defects" complained about by former Chief Justice Bird. Each of the exceptions -- whether to encourage solar energy or provide assistance to those over the age of 55 -- are based upon reasonable public policy considerations. Those exemptions do not render Article XIII A unconstitutional since this Court has recognized that "the latitude of discretion is notably wide in the classification of property for purposes of taxation and the granting of partial or total exemptions upon grounds of policy." *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920).

Furthermore, Petitioner seems confused as to whether property tax discrimination amongst classes of individuals is fair or unfair, equitable or inequitable. Although decrying the effects of Article XIII A's assessment system upon herself and arguing that the exceptions are evidence of further discrimination, Petitioner suggests different preferred treatment for seniors, people on fixed incomes, and people with low incomes. Pet. Br. 34.

Similarly *amicus* League of Women Voters of California, arguing in support of Petitioner, suggests as part of an alternative tax assessment scheme a homestead exemption to protect low income homeowners. The various exemptions and classifications urged by Petitioner and *amicus* League of Women Voters of California may very well be appropriate. They certainly would not be unconstitutional since, like Article XIII A, the suggested classifications promote reasonable state policies. The only difference between the classifications supported by

Petitioner and the League and those created by Article XIII A and its exemptions is that Petitioner and the League favor some exemptions for policy reasons but oppose others. The policy preferences of Petitioner and the League are not a matter of constitutional law but a matter of politics. The ballot box, not the courts, is the appropriate forum for Petitioner and the League to advocate those preferences.

In short, the acquisition value system of assessments may not be perfect, but it may be more equitable than the current-value system of assessments. Whatever the relative merits of the two systems, it is beyond question that there is a reasonable basis for the State of California to adopt the acquisition value system. That system as implemented in California is not arbitrary but is founded upon reasonable policy distinctions. Furthermore, it is beyond question that the U.S. Constitution does *not* mandate that the states adopt a current-value system of acquisition.

D. Article XIII A Should Be Evaluated As A Comprehensive System To Limit Tax Increases While Still Permitting Local Governments To Collect Revenue.

The acquisition value system of assessments mandated by Article XIII A is, standing alone, a reasonable system. However, it might appear to some as unreasonable. Viewing the acquisition value system as part of the comprehensive scheme enacted in Article XIII A, however, makes clear that Section 2 of Article XIII A is a reasonable classification system designed to limit property and other taxes while at the same time permitting local governments to collect revenue.

Prior to the passage of Proposition 13, property tax assessments were skyrocketing, reaching a level such that some homeowners were being taxed out of their homes. The passage of Proposition 13 placed Article XIII A in the California Constitution and helped to limit the continual

tax increases that were plaguing California residents. At the same time Article XIII A permitted local governments to collect the revenue that the voters deemed adequate.

This Court should not look at the assessment provision of Article XIII A in isolation because "each of [the provisions of Article XIII A] is reasonably interrelated and interdependent, forming an interlocking 'package' deemed necessary by the initiative's framers to assure effective real property tax relief." *Amador Valley Joint Union High School District v. State Board of Equalization*, 149 Cal. Rptr. 239, 240, 22 Cal.3d 208, 231, 583 P.2d 1281, 1290 (1978).

In order to understand how Article XIII A operates as a comprehensive scheme to limit taxes, it is necessary to examine the other provisions of the Article in addition to Section 2. Section 1 limits the ad valorem tax on real property to one per cent of the full cash value of such property. Section 3 prohibits the state legislature from imposing new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property. Furthermore, any increase in the tax rate or method of computing taxes can only be imposed by a vote of two-thirds of the legislature. Finally, Section 4 requires a two-thirds vote of the electorate in order to impose special taxes in cities, counties and special districts.

Together, as part of a comprehensive scheme, the provisions of Article XIII A do more than merely replace the current-value assessment system with an acquisition value system. Article XIII A serves the important function of placing limits on tax increases. That limitation benefits all taxpayers while at the same time guaranteeing a stable source of revenue to the government.

The legislative process is generally a matter of compromise and trade-offs. Tax legislation is no exception. The voters of California, in adopting Article XIII A, rejected the current-value system of assessments. The voters also adopted other mechanisms -- such as the

two-thirds vote requirements -- to prevent other tax increases. Allowing for re-assessments at the time of transfer of ownership was an integral part of Article XIII A because it permits the government a reasonable method of funding government services. That was part of the "compromise" of Article XIII A.

Before Petitioner was a homeowner, she benefited from the other tax limits imposed by Article XIII A. In addition, homeowners were paying property taxes for governmental services that she benefited from even though she was not paying property taxes.

Furthermore, while the acquisition value assessment system may have an immediate negative impact upon Petitioner, she is a beneficiary of other aspects of the of the acquisition system which might have a negative impact upon the classes of property owners whom she views as "privileged." For example, she benefits from the fact that pre-1975-1976 purchasers do not receive the benefit of having their property assessed at its actual acquisition assessment value. Furthermore, she benefits from the fact that Article XIII A does not permit all homeowners to carry over the basis of the acquisition value of their prior home to a new home.

Article XIII A could have been fashioned to provide greater protections to homeowners as suggested above. However, that would have made more difficult the collection of the revenue which the voters of California deemed appropriate. In addition, the voters could have enacted legislation to cap property taxes more stringently but permit other non-property taxes to rise. Such a solution would benefit property owners but burden non-owners. However by adopting Article XIII A the voters of California managed to fashion a compromise program that limits not just property taxes, but all taxes, while still supplying the government with funds. Looked at in its totality, the acquisition value assessment system makes sense as a policy that limits tax increases while at the same time permits the government to collect what the voters

believe to be adequate revenue. Certainly that is a reasonable purpose -- from the perspective of beleaguered taxpayers, it is perhaps the most reasonable and important purpose of Article XIII A.

E. This Court Should Not Use Heightened Scrutiny In Evaluating Article XIII A Because It Does Not Infringe Upon The Right To Travel.

It is clear that Article XIII A cannot be overturned unless the Court abandons the rational basis test and applies heightened scrutiny. *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*: *The Supreme Court Gives "Welcome Stranger" Tax Assessments a Cold Reception*. 56 Brooklyn L. Rev. 1383 (1991). Hence, Petitioner also argues that Article XIII A discriminates against the constitutional right to travel.

However, Petitioner's right to travel argument has no merit. Petitioner's reliance upon *Zobel v. Williams*, 457 U.S. 55 (1982); *Hooper v. Bernailillo County Assessor*, 472 U.S. 612 (1985); and *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974) is misplaced. In *Zobel*, this Court struck down Alaska's distribution of oil revenues based upon length of *residency* in the state. *Hooper* involved a property tax exemption for Vietnam Veterans if they were *residents* prior to May 8, 1976. *Memorial Hospital* involved a requirement that an individual *reside* in the county as a prerequisite for receiving free hospital care. The common feature of all three cases is that the constitutionally infirm classifications were based upon *residency*.

However, the provisions of Article XIII A apply equally to residents of the State of California and non-residents. A new home buyer who was born, raised, and never left the County of Los Angles is in *exactly* the same legal status -- with respect to the assessment provision of Article XIII A -- as a new arrival from Nebraska or Timbuktu.

The tax "advantages" that a homeowner might have over a new home buyer are based upon ownership and not residency. To the extent that any advantage exists, a resident of Nebraska who own a home in California would have an advantage over a California resident who was a new home buyer.

Petitioner argues that by creating an incentive for home owners to retain their homes in order to preserve their property assessment baseline, Article XIII A is a barrier or threat of a barrier to travel. Whatever impact Article XIII A has as an incentive to retain one's home, the impact is *not* upon interstate travel.

Article XIII A by placing a limit on taxes, is likely to serve as an inducement -- rather than as a deterrent -- to would-be immigrants to California who would seek the long-term benefits offered by a tax assessment system that guaranteed-predictability in taxes and limits on taxes. Any alleged hardships suffered by newcomers to California are due in equal measure to the failure of the state from which they are moving to offer comparable tax advantages that California offers its homeowners. In summary, Article XIII A is no more a barrier to travel than good schools, good transportation, or other tax advantages that make one state more attractive than another.

II. THIS COURT SHOULD DEFER TO THE ELECTORATE OF CALIFORNIA RATHER THAN ACT AS A SUPER-LEGISLATURE TO REWRITE TAX CODES.

The reluctance of this Court to become involved in rewriting tax laws, except under the most extreme circumstances, serves an important function. The courts lack technical expertise as well as knowledge about the economic and other social impacts that any given tax policy will have. This Court has long recognized that "Justices of this Court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising . . . of public revenue." *San*

Antonio Independent School District v. Rodriguez, 411 U.S. 1, 41 (1973).

Even Petitioner and some of the *amicus* briefs supporting Petitioner implicitly recognize the difficulties of having this Court rewrite tax codes. Petitioner properly states that it would be inappropriate for this Court to determine the appropriate relief if Petitioner is successful. Pet. Br. at 49.

The proper recourse for any real or perceived inequities created by Article XIII A is in the State of California -- not the federal judiciary. Petitioner argues that a majority of California property holders are losers in the Article XIII A assessment system. If that is true, the majority of California voters can repeal or modify Article XIII A. However, they have not done so, and perhaps that is because the majority of those who purchased property after 1978 realize that they are also beneficiaries of Article XIII A. From the date of the acquisition of their property they are beneficiaries of the system which prevents government from taxing property holders out of their homes.

If Petitioner prevails in this case, this Court will become a super-legislature for the fifty states constantly rewriting tax codes. *Amici* respectfully suggest that this Court is ill-prepared to fulfill that function and that its code is not likely to be any "fairer" or more equitable than tax codes devised by the legislature or the people through initiative process.

Fortunately, the test in not "equity" or "fairness" or "discrimination." This case does not present this Court with the question as to whether someone, somewhere can devise a more "equitable" system of taxation. The question before this Court is whether the system violates the Constitution, and the test is whether Article XIII A has some rational justification. If this Court rules that acquisition value taxation is unconstitutional, then this Court will be flooded by litigants challenging every tax in

the various states. *Amici* respectfully suggest that this Court retain its traditional standard and uphold Article XIII A.

CONCLUSION

For the reasons stated herein, the judgement of the court below should be affirmed.

Respectfully submitted,

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